

EXHIBIT 10

Jenny A. Durkan

March 1, 2022

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KING

SEATTLE TIMES COMPANY,)
)
)
Plaintiff,)
)
vs.) No. 21-2-07268-9 SEA
)
CITY OF SEATTLE,)
)
Defendant.)
)

REMOTE DEPOSITION UPON ORAL EXAMINATION OF

JENNY A. DURKAN

Tuesday, March 1, 2022
1:02 p.m. to 5:13 p.m.

REPORTED BY:

VERB8M REPORTING, INC.
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Seattle Times Company v. City of Seattle
VERB8M REPORTING, INC. (206) 467-0800

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1 A I don't know.

2 Q I'm sorry, I called it an email, and I meant a text
3 message.

4 A I do not know.

5 Q Okay. And so did you ever decline or refuse to
6 produce text messages requested by The Seattle Times?

7 A No.

8 Q Okay.

9 A There could have -- Actually, a caveat. There could
10 be a case that I'm not aware of where there would have
11 been a text message that was determined to be exempt and
12 wasn't produced; but I took your question to mean did I
13 personally refuse to produce information, and the answer
14 is no.

15 Q Right. Okay. Have you ever as Mayor deleted any
16 message on a device issued to you by the City of Seattle?

17 A And by message, you mean text message?

18 Q Yes.

19 A Okay. So as I said before, there were occasions
20 when I would get text messages that would be like phishy
21 things where I would delete. There -- I won't say there
22 wasn't any occasion it happened, but my practice was to
23 keep all of my text messages on my phone, even those that
24 were, "Call me," or, you know, just very brief
25 non-substantive text messages.

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1 Q Okay. And what do you mean by phishy things?

2 A Oh, sorry. Phishing is -- There's a lot of scams

3 where people will say, you know, "This is Chase Bank.

4 Your account is overdrawn. Click here immediately."

5 Or more sophisticated ones that will actually use

6 your name and ask you to respond, and by doing that they

7 then get access to your phone with malware. And so

8 anything that looks suspicious like that. We had -- There

9 was periodically a number of people in the City, including

10 myself, there was concerted activity on that front. So

11 there would be -- It would go in waves.

12 Q Okay. So you would delete phishy things, but not

13 other text messages from your City phones; is that

14 correct?

15 A My practice was to keep everything.

16 Q Okay. And did you ever send business messages or,

17 you know, city-related text messages on a personal device?

18 A We talked about that earlier, that there would be

19 occasions when that occurred, and we would search the

20 device for responsive messages and produce them.

21 Q And have you ever deleted a business or city-related

22 message on a personally owned device?

23 A Again, my practice was if it was City related and

24 substantive, I would keep it.

25 Q And was that always the case?

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1 MR. LAWRENCE: You should note to say yes
2 rather than nod your head.

3 Q (By Ms. George) Yes.

4 A I think that, you know, we just received the
5 forensic report that indicated that the messages were
6 missing from the phone because the retention setting on
7 the phone was set for a period of time to 30 days instead
8 of forever. That's my understanding.

9 Q Okay. And is it possible that you personally
10 deleted any of the missing messages?

11 A I think you just asked me a series of questions of
12 what my practice was and the types of messages that I
13 would delete from the phone. There could be occasions
14 when there was, you know, scheduling -- "Are you there?
15 Okay." -- that were deleted, but my practice was that
16 anything that was substantive related to City business I
17 maintained.

18 And I think that the records that we've produced to
19 The Seattle Times from November of 2017 when I became
20 Mayor up until June of 2020, and from July -- and from
21 June 24th through December 31, 2021 demonstrate that.

22 Q Well, I appreciate that answer, --

23 MR. LAWRENCE: Kathy, I mean, it is the
24 normal practice to take a break every hour. We've been
25 going now for another hour since the last break.

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1 answer.

2 Is it possible that you -- that you deleted any of
3 the missing messages?

4 MR. LAWRENCE: Again, I'm going to object
5 to the form of the question. It's been asked and
6 answered, as well as being improper form.

7 If you have any different answer to say, --

8 A I think I answered that question.

9 Q (By Ms. George) Okay. Have you ever changed any
10 retention settings on any device issued to you by the
11 City?

12 A No.

13 Q Besides yourself, who has had physical access to
14 devices issued to you by the City?

15 A So by devices do you mean my cellphone and my
16 computers, or do you mean my cellphone?

17 Q I mean your cellphone. Thanks.

18 A Okay. That would be myself, the Seattle IT
19 Department, various individuals there.

20 And then in a probably very transitory fashion my
21 assistant or office manager, who I would give the phone to
22 give to the IT Department, and then in reverse the IT
23 Department would give it to them to give to me.

24 Q Now, I understand there is an IT Department, and
25 then there was an IT staff within the Mayor's Office.

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1 significant protest at our home. Police were at our
2 home -- in our home, but not outside the home, and reports
3 online where there were upwards of two to four thousand
4 people. It lasted for a very significant period of time.
5 There was additional property damage. We were up watching
6 it.

7 And then that night I received a message in the
8 middle of the night related to the fact that -- I was
9 alerted to the fact that the woman was killed on I-5 and
10 asked to see if we could have conversations the next
11 morning. Had conversations related to that death on I-5,
12 as well as a number of other protest-related events.

13 It's a very, very small cabin, so I decided to -- It
14 was very low tide. In this particular beach you can walk
15 for miles and miles. So I took my calls outside and
16 talked to the person from one of the Black organizations
17 about some concerns they had on responses to some issues.

18 And then took a very long walk, came back, talked my
19 senior deputy mayor, Mike Fong, to kind of organize a
20 number of issues. Decided to go back to the cabin. **It**
21 was the 4th of July. And was going to make one last call
22 and realized I didn't have my phone, and it had fallen out
23 of my pocket.

24 So I retraced my steps and found the phone sitting
25 in kind of a smallish tidal pool-ish type thing. It

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1 wasn't functioning well. So I turned it off, took it back
2 to the house, threw it in a bag of rice.

3 Q I'm starting to understand why you decided not to
4 run for mayor again.

5 So can you say -- You don't have to give an exact
6 address -- but what beach were you at?

7 A I think we can arrange for that, but for purposes
8 now it just -- It was a beach on Puget Sound.

9 Q Okay. And so it just fell out of your pocket,
10 basically, --

11 A Yes.

12 Q -- into the saltwater?

13 MS. GEORGE: Okay. Well, why don't we
14 break here, and shall we take 15 minutes?

15 MS. DURKAN: Sure.

16 MS. GEORGE: Okay.

17 MS. DURKAN: Thank you.

18 MS. GEORGE: Thank you.

19 (Break 3:12 p.m. to 3:27 p.m.)

20 MS. GEORGE: All right. Thanks.

21 MS. DURKAN: And Ms. George, I want to
22 clarify something, just if it wasn't clear before, if I
23 could.

24 Q (By Ms. George) Okay.

25 A You know, you had asked a question about public

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1 determined the scope of this report or commissioned the
2 report.

3 Q Okay. So regarding that question who changed the
4 phone settings, do you know the answer?

5 A I do not.

6 Q Did you ever --

7 A And I assume you're talking about the retention
8 setting.

9 Q Yes.

10 A I do not.

11 Q As Mayor you were in charge of the City's IT
12 Department; correct?

13 A Our chief technology officer was the executive in
14 charge of the Seattle IT Department.

15 Q And did he answer to you ultimately?

16 A They report to the Mayor. That's correct.

17 Q Okay. Why not when you were Mayor ask the IT
18 Department to determine who changed your phone setting
19 from forever to 30 days?

20 MR. LAWRENCE: Object to the form of the
21 question.

22 A Again, I think that assumes and calls for
23 speculation.

24 It's my understanding by the time that I was
25 informed or knew about this, No. 1, there was litigation

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1 Q Okay. And you started using the iPhone 8 Plus
2 FirstNet on October 30th, 2019; is that correct?

3 A I think it's in and around that date. I can't be --
4 I don't remember specifically when they gave me the new
5 phone.

6 Q Okay. And were the text messages from the 8 Plus
7 Verizon transferred to the 8 Plus FirstNet --

8 A I don't --

9 Q -- at the time?

10 A I don't know the answer. I don't have specific
11 information about that. I assume that they were, but that
12 would have been done by the Seattle IT Department.

13 Q Okay. And do you know if, in fact, it was the
14 IT Department that did the iCloud backup on October 30,
15 2019?

16 A I do not know who did that iCloud backup.

17 Q Okay. So let's look at footnote two on page 3. Do
18 you see where it says, "The disable and delete function
19 was used on July 4th, 2020"?

20 A Footnote three on which page?

21 Q It's footnote two on page 3. Well, it starts on
22 page 3.

23 A I do see that.

24 Q Did you use the disable and delete function on
25 July 4th?

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1 A I have no recollection of seeing that prompt or
2 clearing that prompt.

3 Q Well, could anyone else have done it on that day
4 when you were at the beach?

5 A No.

6 Q So is it fair to assume that you did it?

7 MR. LAWRENCE: Objection, argumentative.

8 A No. I think the -- You know, describing exactly
9 what happened, my focus was on restoring the data to my
10 phone and so was able to restore from an iCloud backup the
11 messages to my phone.

12 And in that process, you know, I was not -- I had
13 trouble restoring other items, like the calendar and the
14 email, and so those things in the iCloud setting. I have
15 no recollection of seeing the prompt that you refer to or
16 clearing that prompt.

17 Q (By Ms. George) Okay. Can you explain your
18 testimony that you were focusing on restoring? Do you
19 mean you were trying to restore the data on the phone
20 after you found it in the water?

21 A Correct. As I said, it was pixelated, so I shut it
22 down. I took it back, put it in a bag of rice, left it
23 there for a period of time, and then went to get it, the
24 data on the phone, and ended up having to restore from
25 iCloud.

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1 And so there's -- My best recollection is there's a
2 screen that says, "Do you want to set this up as a new
3 phone, or do you want to restore from iCloud?" I chose
4 restore from iCloud, and that's what then it took me to my
5 iCloud and was able to download the backup to my phone.

6 And so that restored to my phone the data that was
7 there, and I think that's reflected in the report. It
8 says there was a successful restoration of the data to the
9 phone on July the 4th. And so I was focused on making
10 sure that I could restore and get my phone back working
11 again and getting it to limp along, knowing that I would
12 be able to give it back to IT, you know, within a couple
13 days.

14 Q So you were able to download a previous backup. Do
15 you know what the date of that backup was?

16 A I don't have an independent information. As I read
17 the forensic report, they inferred the backup was a
18 February backup.

19 When I did it I just selected back up from iCloud
20 and was able to restore data to the phone.

21 Q I see. Okay. So is it possible that in the process
22 of trying to restore from iCloud that you activated the
23 disable and delete function?

24 MR. LAWRENCE: Objection, calls for
25 speculation, otherwise to the form.

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1 A Yeah, the report indicates that that occurred during
2 that process, and -- But I -- And shows what the prompt
3 you would get. I have no recollection of seeing or
4 clearing that prompt in that process.

5 I do recall having trouble getting my calendar to
6 load and trying to get it to load, and in the iCloud
7 settings trying to see if the getting calendar to load up
8 I could do that. I have no recollection of seeing any
9 prompt about messages, and I got my messages.

10 Q Okay. Was anyone else handling the phone that day
11 after it fell in the water?

12 A No.

13 Q Okay. So the forensic report says that the message
14 retention on either the iPhone 8 Plus FirstNet or the
15 iPhone 11 was set at 30 days at some point between
16 July 4th and whenever the forever setting was restored
17 between July 22nd and July 26th, and my question is -- a
18 long and convoluted one -- did you set the retention at
19 30 days?

20 A No.

21 Q Okay. And your testimony is you don't know who did?

22 A That's correct.

23 Q Okay. Who had possession of your iPhone 8 Plus
24 FirstNet between July 4th and July 26th?

25 A So I don't know all the individuals, but the IT

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1

C E R T I F I C A T E

2 STATE OF WASHINGTON)
) SS
 3 County of King)

4 I, the undersigned Washington Certified Court
 Reporter, pursuant to RCW 5.28.010 authorized to
 5 administer oaths and affirmations in and for the State of
 Washington, do hereby certify:

6 That the annexed and foregoing deposition of the
 witness named herein was taken stenographically before me
 7 and reduced to typewritten form under my direction.

8 I further certify that the witness examined will be
 given an opportunity to review and sign their deposition
 after the same is transcribed, unless indicated in the
 9 record that the parties and witness waived the signing.

10 I further certify that all objections made at the
 time of said examination to my qualifications or the
 manner of taking the deposition or to the conduct of any
 11 party have been noted by me upon the deposition.

12 I further certify that I am not a relative or an
 employee or attorney or counsel of any of the parties to
 said action, or a relative or employee of any such
 13 attorney or counsel, and that I am not financially
 interested in the said action or the outcome thereof.

14 I further certify that the witness before examination
 was by me duly sworn to testify the truth, the whole
 15 truth, and nothing but the truth.

16 I further certify that the deposition, as
 transcribed, is a full, true and correct transcript of the
 testimony, including questions and answers and all
 17 objections, motions and exceptions of counsel made and
 taken at the time of the foregoing examination and was
 18 prepared pursuant to Washington Administrative Code
 308-14-135, the transcript preparation format guideline.

19

20 IN WITNESS WHEREOF, I have hereunto set my hand this
 11th day of March, 2022.

21

22 Jeanne M. Gersten, RDR, CCR
 Registered Diplomatic Reporter
 23 Washington CCR No. 2711
 License effective until April 2, 2022
 24 Residing at Seattle, Washington

25



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